

Town of Frye Island / Application for Park and Ride Facility L-25719-NA-B-N
Request for Board Jurisdiction by The Friends of Raymond Cape

- Friends' April 5, 2013 Letter to the Board with Attachments
-

APPEAL
TO
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DECISION OF COMMISSIONER

MDEP File No. L-25719-NA-B-N

April 5th, 2013
Chair, Board of Environmental Protection
Department of Environmental Protection
Bureau of Land And Water Quality.
17 State House Station
Augusta, ME 04333-0017

UPS Ground

To Board: Maine Department of Environmental Protection, Bureau of Land And Water Quality.

Re: Commissioner's Decision: March 22, 2013;
Public Hearing.

Town of Frye Island Cape Road & Quarry Road
Map/Lot: 002/011 & 070/006
Park & Ride For Ferry Landing
MDEP File No. L-25719-NA-B-N

Introduction

The Friends of Raymond Cape having made their appearance by and through Counsel on February 19, 2013, and have standing with respect to the above cited application, Appeal the Decision of the Commissioner. The Friends of Raymond Cape made a timely application that the Board of Maine Department of Environmental Protection take jurisdiction over this Application and hold public hearings.

Under date of March 22, 2013, the Commissioner made the finding that the above cited Application does not meet the Chapter 2 Rules criteria for the Board of the Maine Department of Environmental Protection to accept jurisdiction and hold public hearings. The Commissioner apparently applies *Draft Rules* which have not been approved as of the date of this Appeal. To the extent that the statutory authority granted to the Board for rule making pursuant to 38 M.R.S.A. § 341 D & H for the Proposed Rules applies to this Appeal, the Friends of Raymond Cape argue that the assumption of jurisdiction over the Application of the Town of Frye Island is equally warranted.

Board Criteria To Take Jurisdiction

The Rule 2 at Section 17 of the Chapter 2 RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS () provide the criteria for the Board's Assumption of jurisdiction over the application process.

The Board shall assume jurisdiction over the application if it finds that the application:

- (1) involves a policy, rule or law that the Board has not previously interpreted;
- (2) involves important policy questions that the Board has not resolved;
- (3) involves important policy questions or interpretations of a rule or law that require reexamination; or
- (4) is of substantial public interest. An application is of substantial public interest if the project has the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest.

Record Before Commissioner

The Board must consider the record before the Commissioner in applying the criterion for acceptance of jurisdiction (Opposition To Storm Water Law Permit Appended Hereto).

1. The Friends of Raymond Cape have raised the issue that the Board has not previously considered with respect to the criterion of All Right Title and Interest of the Applicant, the Town of Frye Island. Within the Opposition to Site Plan Review filed on February 19, 2013, the Friends of Raymond Cape argued that the Town of Frye Island is without charter or statutory authority to develop a public facility out side of the corporate limits of the Town of Frye Island. This issue of *right title and interest* has not yet been resolved by the Commissioner, and until settled, the Application is not complete and properly before the Maine Department of Environmental Protection.

2. The Application filed by the Town of Frye Island involves the development of more than twenty six acres of land upon the shore of Sebago Lake, situated at Raymond Cape. The Friends of Raymond Cape have argued as a basis of its Opposition that the Town of Frye Island has

failed to apply for a permit under the Site Location of Development Law (38 M.R.S.A. § 481 et. sec.). The issue of whether the Site Location of Development Law is implicated remains unresolved by the Commissioner.

3. The Friends of Raymond Cape have raised the issue of the inadequacy of the Application filed by the Town of Frye Island within its Opposition filed on February 19, 2013. The amount of impervious surfaces and the total area of development was misrepresented to the Maine Department of Environmental Protection within the Application filed by the Town of Frye Island. The Town of Frye Island made representations within the Application that only 1.36 acres were subject to the development plan and that only .96 acres will be developed as impervious areas.

The Town of Frye Island amended its plans under Site Plan Review before the Planning Board for the Town of Raymond which included a much greater development area for paved pedestrian walkways, paved turning lanes, impervious armoring of ditching. The amended Site Plan application further included relocation and paving of roadway intersections, widening and paving of inbound stacking lanes to the ferry terminal and additional ferry landing parking.

None of these areas were included within the phosphorous calculations as represented within the Storm Water Application and represent a serious deficiency within the Application.

Application of Criterion

The first three criterion may be collapsed to the general policy consideration that this Board must address:

1. That the Town of Frye Island has failed to demonstrate *all good right title and interest* in order to develop a public Park & Ride facility serving the Town of Frye Island situated within the Town of Raymond. This remains a policy issue which has not been previously interpreted, nor resolved by the Commissioner.
2. Where the Town of Frye Island has encumbered in perpetuity the full twenty six acre parcel under its Site Plan Review for storm water run off mitigation and phosphorous export calculations, the issue of whether the Site Location of Development Law (38 M.R.S.A. § 481 et. sec.) is implicated. This remains a policy issue which has not been previously interpreted, nor resolved by the Commissioner.
3. Where the Application brought by the Town of Frye Island has misrepresented the area being made subject to development, and the

area of impervious surfaces being developed has been understated, it is necessary for this Board to reexamine the Application Processing procedure to ensure that the Storm Water Law is properly administered.

4. There is broad public interest in having the Board take jurisdiction over this Application. The Municipal Park & Ride Facility as planned will be developed within the Shoreland Zone on Raymond Cape and upon the shore of Sebago Lake which was designated as a *Lake Most At Risk* pursuant to Rule 502 (38 M.R.S.A. § 481 st. sec.). Sebago Lake serves as the water supply for a large population within Cumberland County which is administered by the Portland Water District. The several towns and districts which are bound by the shores of Sebago Lake all have a keen public interest in protecting the water quality which supports the ecology and economy of the region.

Criterion Title 38 M.R.S.A. Section 341 D & H

To the extent that it may be found as a matter of law that the Board of Environmental Protection has the authority to implement and approve the Proposed Rules granting authority of discretion to assume jurisdiction pursuant to the criterion set forth within Title 38 M.R.S.A. §§ 341 D & H, the Board will find that the assumption of jurisdiction is warranted over the pending Storm Water Law Application. The criterion of the proposed rules are set forth as follows:

38 M.R.S.A. § 341 D

2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- E. Will have an environmental or economic impact in more than one municipality, territory or county;
- F. Involves an activity not previously permitted or licensed in the State;
- G. Is likely to come under significant public scrutiny; and
- H. Is located in more than one municipality, territory or county.

The board shall also decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been

met.

Taken serially, and similar to that found in the record above, the Board will find that the criterion pursuant to 38 M.R.S.A. § 341 D have been met.

1. The Application of the Town of Frye Island for a Municipal Park & Ride facility is proposed to be built into the shore of Sebago Lake upon Raymond Cape, Town of Raymond, Maine. The Town of Frye Island claims title to all certain parcels being delineated upon Map/Lot: 002/011 & 070/006 of the tax maps for the Town of Raymond, and the State of Maine as are affected by the Application For Site Plan Review for a municipal Park & Ride facility:

1. Deed of Paul M. Willis and Janet R. Willis to the Town of Frye Island, being recorded in the Cumberland County Registry of Deeds in Book 41348, Page 125 on June 24, 2005;
2. Deed of Carl Bloom and Shirley Bloom to the Town of Frye Island being recorded within the Cumberland County Registry of Deeds in Book 20750, Page 100, on June 8, 2004;
3. ~~Deed of Frye Island, Inc. to the Town of Frye Island being recorded~~ within the Cumberland County Registry of Deeds in Book 20571, Page 275, on October 29, 2003.

The residents of the Raymond Cape and the Town of Raymond tax payers, generally, will bear the burden of the Municipal Park & Ride Facility which will serve only the Town of Frye Island. The economic impact is a detriment to the Town of Raymond, while the benefit inures to Frye Island. The detrimental effects of the phosphorous export will effect the several towns and districts whom share the fragile ecology of the Sebago Lake shoreline. Accordingly the criterion at 38 M.R.S.A. § 341 D 2 (E) are met.

2. There is no precedent within this state before this Board of Environmental Protection which has licensed a revenue producing public facility such as the Municipal Park & Ride Facility to be established within the corporate limits of another municipality. The Friends of Raymond Cape have further objected to the Application of the Town upon the basis that Frye Island has failed to produce evidence of *all good right title and interest*. No license has been granted by the Board where in sufficient *right title and interest* has been found. Accordingly the criterion at 38 M.R.S.A. § 341 D 2 (F) are met.

3. There has been significant and overwhelming opposition to the plan of the Town of Frye Island to impose a Municipal Park & Ride Facility upon the shore of Sebago Lake. The Members of the Friends of Raymond Cape are over two hundred in number and have taxed assessed property exceeding \$124,000,000. on Raymond Cape, all as appearing on Appendix I to the Opposition To Storm Water Law Permit appended hereto. Certainly the criterion at 38 M.R.S.A. § 341 D 2 (G) is met

4. Criterion at 38 M.R.S.A. § 341 D 2 (H) is essentially the identical criterion as 38 M.R.S.A. § 341 D 2 (E) and the response above is incorporated herein.

The Board will find the criterion at 38 M.R.S.A. § 341 D 2 (E-H) are palpably met and the assumption of jurisdiction is warranted.

Public Hearing

The Friends of Raymond Cape requested a public hearing pursuant to section 7 of the Chapter 2 RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS (www.maine.gov/sos/cec/rules/06/096/096c002.doc) on the Application of the Town of Frye Island for a Storm Water Law Permit. Section 7 Public hearings is reproduced as follows:

Section 7 Request For Hearing

- A. Request for public hearing on an application. The Department shall provide an opportunity for the applicant, or any interested agency, person or group of persons, to request a public hearing with respect to any application. A request for a public hearing on an application must be received by the Department, in writing, no later than 20 days after the application is accepted as complete for processing. The request must indicate the interest of the person filing such request and specify the reasons why a public hearing is warranted.

The Friends of Raymond Cape made a timely request for a public hearing pursuant to section 7 of Rule 2 of the Rules Concerning the Processing of Applications and Other Administrative Matters.

Section 7 Criteria For Public Hearing

The criterion for a public hearing of the Board of Environmental Protection is set forth as follows:

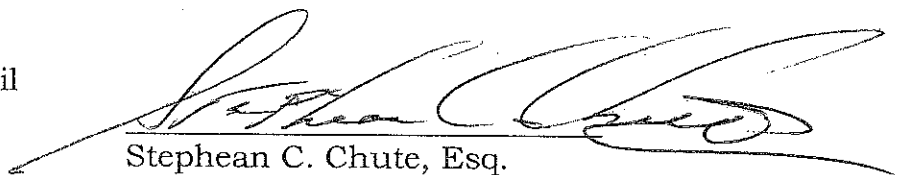
- B. Criteria for holding public hearings. Public hearings are discretionary unless otherwise provided by law. The Commissioner may conduct a public hearing on any application. The Board may conduct a public hearing on any application over which it has assumed jurisdiction or any appeal or petition for reconsideration.

The Department will hold public hearings in those instances where the Department determines there is **credible conflicting technical information** regarding a licensing criterion and it is likely that **a public hearing will assist the decision maker in understanding the evidence**. When the Board assumes jurisdiction over an application, it will hold a public hearing unless it votes otherwise at the time it assumes jurisdiction. (Emphasis added)

In the Application instantly before the Department of Environmental Protection, the Friends of Raymond Cape have set forth evidence which is revealed within the Application that raises serious conflicting technical information which may only be resolved by a public hearing on the Application.

The Application of the Town of Frye Island for a Municipal Park & Ride Facility carved into the shore of Sebago Lake is of such public interest of the several towns which share the ecology of the lake that the Board of Environmental Protection will conclude that a public hearing is warranted.

Dated this ^{5th} day of April



Stephen C. Chute, Esq.

Maine Bar No. 6828

Attorney for Friends of Raymond Cape

P.O. Box 707

South Casco, Maine 04077

Copies:

Commissioner, Department of Environmental Protection

Code Enforcement Officer, Town of Raymond

Chairman, Planning Board, Town of Raymond

Planner, Town of Raymond.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

March 22, 2013

Stephean Chute, Esq.
P.O. Box 707
South Casco, Maine 04077

RE: MDEP Stormwater Management Permit, Project #L-25719-NA-B-N
Frye Island Park & Ride Facility, Raymond

Dear Mr. Chute:

Thank you for your letter dated February 19, 2013 concerning the Town of Frye Island's application to construct the Frye Island Park & Ride Facility in Raymond. The proposed project will require a Stormwater Management Permit from the Department. The Department welcomes and considers any comments submitted during the review of pending applications.

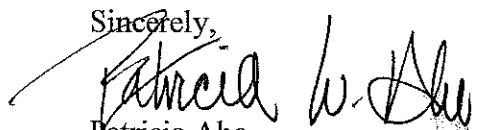
I have carefully considered your concerns about potential environmental impacts resulting from the proposed project and your request to have the Board of Environmental Protection hold a public hearing and assume jurisdiction over this project. Chapter Two, the Department's Rules Concerning the Processing of Applications, states that the Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. Recent revisions to Chapter Two outline the criteria for determining when a project is of statewide significance. The project must meet at least three of the following four criteria:

- A. Will have an environmental or economic impact in more than one municipality, territory or county;
- B. Involves an activity not previously permitted or licensed in the State;
- C. Is likely to come under significant public scrutiny; and
- D. Is located in more than one municipality, territory or county.

Chapter 2 also states that, "When the Board assumes jurisdiction over an application, it will hold a public hearing unless it votes otherwise at the time it assumes jurisdiction."

After reviewing your concerns, I believe that this application does not meet the Chapter 2 criteria for the Board to assume jurisdiction. Therefore, I am recommending that the Board not assume jurisdiction or hold a public hearing on this project. If you have further questions or would like to submit additional written comments concerning this application, please contact Christine Woodruff in the Southern Maine Regional Office in Portland at christine.woodruff@maine.gov or (207) 615-6426.

Sincerely,



Patricia Aho
Commissioner

C: Christine Woodruff, MDEP (christine.woodruff@maine.gov)

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OPPOSITION
TO
STORM WATER LAW PERMIT
Town of Frye Island
Cape Road & Quarry Road
Map/Lot: 002/011 & 070/006
Park & Ride For Ferry Landing
MDEP File No. L-25719-NA-B-N

February 19, 2013
Department of Environmental Protection
Bureau of Land And Water Quality.
Southern Maine Regional Office,
312 Canco Road, Portland Maine 04103
(Delivered In Hand February 19, 2013)

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OPPOSITION
TO
STORM WATER LAW PERMIT
Town of Frye Island
Cape Road & Quarry Road
Map/Lot: 002/011 & 070/006
Park & Ride For Ferry Landing
MDEP File No. L-25719-NA-B-N

February 19, 2013
Department of Environmental Protection
Bureau of Land And Water Quality.
Southern Maine Regional Office,
312 Canco Road, Portland Maine 04103
(Delivered In Hand February 19, 2013)

To the Maine Department of Environmental Protection, Bureau of Land
And Water Quality.

Greetings:

The Members of Friends of Raymond Cape, Quarry Road Association and Raymond Cape Association being present, (hereinafter collectively as Friends of Raymond Cape) by and through the undersigned counsel, and in Opposition to the Application of the Town of Frye Island for a Storm Water Law Permit. Appendix I – Association And Membership.

I. Application Posture

The Town of Frye Island filed its Application for Storm Water Law Permit Site pursuant to 38 M.R.S.A. § 420 D for a permit to development a plan of a Municipal Park & Ride facility upon Map/Lot: 002/011 & 070/006 as delineated upon the tax maps for the Town of Raymond, Maine. The Applicant filed supplemental materials on December 26, 2012, together with the original Storm Water Permit Application dated June 6, 2012 with the Department of Environmental Protection (DEP). The Application was deemed complete by the MDEP Project Manager on January 30, 2013.

The Applicant has the burden of proof on all criterion and standards within 38 M.R.S.A. § 420 D and Chapter 2 Rules, which if not met requires dismissal of the Application by the Commissioner.

II. Request For Notices; Request For Public Hearing; Request For Board of Environmental Protection To Take Jurisdiction

The *Interested Parties* all of whom are listed at Appendix I have standing and request pursuant to Chapter 2 (7)(A) that the Commissioner cause that the undersign counsel be given notice of all proceedings under this Application and set for a public hearing of all doings with respect to the Application.

The *Interested Parties* all of whom are listed at Appendix I have standing and request the Commissioner to cause the Board of Environmental Protection to take jurisdiction pursuant to Chapter 2 (17).

III. Title Real Property

The Town of Frye Island claims title to all certain parcels situated at Raymond Cape, Town of Raymond, County of Cumberland and the state of Maine as are affected by the Application For Site Plan Review for a Municipal Park & Ride facility:

1. Deed of Paul M. Willis and Janet R. Willis to the Town of Frye Island, being recorded in the Cumberland County Registry of Deeds in Book 41348, Page 125 on June 24, 2005;
2. Deed of Carl Bloom and Shirley Bloom to the Town of Frye Island being recorded within the Cumberland County Registry of Deeds in Book 20750, Page 100, on June 8, 2004;
3. Deed of Frye Island, Inc. to the Town of Frye Island being recorded within the Cumberland County Registry of Deeds in Book 20571, Page 275, on October 29, 2003.

IV. Summary Of Opposition:

The Friends of Raymond Cape oppose consideration of the Town of Frye Island's Application for Storm Water Law Permit pursuant to 38 M.R.S.A. § 420 D upon the following disqualifying grounds.

1. The Town of Frye Island has failed to demonstrate *all right, title and interest* whereas the Town of Frye Island is without Constitutional Charter or Statutory authority to own or develop real property beyond its corporate limits; or to operate a revenue producing public service upon real property outside of the corporate limits of the Town of Frye Island;
2. The Town of Frye Island has failed to apply for and be awarded a permit Site Location of Development Law (38 M.R.S.A. Sections 481 et. Sec).

3. The Town of Frye Island has failed to meet the statutory and rule requirements of the Site Location of Development Law (38 M.R.S.A. Sections 481 et. Sec) that the Municipal Park & Ride fits harmoniously into the existing natural environment and that the development will not adversely affect the existing uses, scenic character, air quality, water quality or other natural resources.
4. The Town of Frye Island has failed to meet the statutory and rule requirements of Application for Storm Water Law Permit (38 M.R.S.A. § 420 D).

V. Standing; Friends of Raymond Cape; Particularized Harm

The undersigned counsel represents the members of Friends of Raymond Cape all as appearing upon the schedules appended hereto as Appendix I and each of whom, as property owners, abutters and residents of the Town of Raymond, will have suffered particularized harm if the municipal Park & Ride facility is approved under MDEP Site Plan Location And Development Law and in granting a Storm Water Discharge Permit. Appendix I. Friends of Raymond Cape.

The development plan of the Municipal Park & Ride facility in its most benign interpretation shifts the burden of automobile traffic and parking problems off from Frye Island to the mainland of Raymond Cape. The Town of Frye Island under its taxing authority will assess its several hundred residential properties at higher rates for the public service of a municipal parking lot on the mainland, while the residents of Raymond Cape will bear the burden of traffic congestion, spoliation of an ecology and the diminution of property values.

The particularized harm will be manifested in its broadest scope by the ecological damage to a fragile parcel of land within the shoreland protection zone. The development of a municipal Park & Ride facility is not a "suitable development and its construction will cause detriment to the Town of Raymond and the environment"; the plan fails to "conserve the Town's natural beauty and visual character and charm, [and] ... aesthetic quality of the natural terrain...".

Demand for transient parking within proposed municipal parking lot is projected to expand exponentially with the growth of development on Frye Island. The lighting plan within the Application not only creates its own form of pollution of the clarity of the night sky, and an intrusion into the homes of the neighbors, but is an attractive nuisance to loitering, transient overnight parking. This provision for transient and long term parking will set off a cascade of policing and safety problems that cannot

be anticipated nor imagined by the Maine Department of Environmental Protection.

The storm water run-off of a municipal parking lot, even if permitted, will cause irreparable harm to the ecology of a pristine shoreline of Sebago Lake which affects not only the lives of the Members of the Friends of Raymond Cape but the public generally.

Owing to such a large scale municipal development, the members of the Friends of Raymond Cape, appearing herein, demonstrate a particularized harm to the approval and development of Town of Frye Island's municipal Park & Ride facility and accordingly have standing before the Board of the Maine Department of Environmental Protection.

VI. Right, Title And Interest;

Town of Frye Island Without Authority To Own Real Property And Develop Enterprises Within The Town of Raymond;

Grant Of Charter

The Town of Frye Island was incorporated by the 118th Legislature of the State of Maine granting of Charter. The bill was signed into law on June 12, 1997; and ratified on October 1997; which became effective on July 1, 1998.

Private and Special Laws of the 118th legislature at Sec. C-4. P&SL 1975, c. 138, §5, as amended by P&SL 1987, c. 108, §2, provides in part:

The corporation is authorized and vested with the power, at any legal meeting called for the purpose, to raise the sums of money necessary for the following purposes: To construct, maintain and repair roads, streets, ways and sidewalks; to procure water for fire, domestic and other purposes, to provide or procure sewer and refuse disposal facilities, and to provide light for public use; to establish and maintain police and fire protection; **to build, repair and maintain public wharves and landings; to purchase, maintain and operate ferries or boats for transportation from the island to the mainland;** to purchase, construct, maintain and repair such buildings and equipment as may be necessary or desirable for such purposes; to acquire by purchase or gift, and by deed, will, lease or otherwise title to real estate and personal property for the benefit of the corporation; to manage, operate, mortgage, sell, lease and exchange real estate and personal property for the benefit of the corporation; to contract with any individual, firm, association or corporation to accomplish such purposes; and to pay salaries and expenses of the corporation; or for any other lawful purpose relating to public health and safety, maintenance or improvement of **public property or public services**, acquisition of real or personal property or compliance with any law, ordinance or regulation. (Emphasis added.)

**Power of Appropriation;
Limitation Of Authority**

The authority granted by the 118th Legislature to the inhabitants of Frye Island was limited to the appropriation of funds for **public property or public services**, which included the intercourse by ferry from the island to the mainland. The Legislature has defined *public property* pursuant to 36 M.R.S.A. § 651 (1)(D) as

[t]he property of any public municipal corporation of this State appropriated to public uses, ***if located within the corporate limits and confines of such public municipal corporation.***

(Emphasis added)

The corporate limits of the newly formed Town of Frye Island is delineated under the 118th Legislature Private And Special Laws as

[T]he island in Sebago Lake identified as Frye Island together with the surrounding waters within two-hundred feet (200') from the shoreline of Frye Island,.... The island and surrounding waters described in this section are referred to in this Act as "the Frye Island territory.

Without the power of appropriation, there is no authority to acquire real property or expand services beyond the corporate limits of Frye Island.

Town of Frye Island Charter; Home Rule

The Town of Frye Island by its Charter is vested with the Constitutional authority of *Municipal Home Rule* pursuant to Article VIII of the Constitution of the State of Maine. Article VIII, The Home Rule implementation language regarding charters is found at 30-A MRSA §§ 2101-2109. Municipal Home Rule does not afford unfettered authority to chartered towns. The related statutory home rule authority is established at 30-A MRSA § 3001. This statute is limited to authorizing municipalities to enact ordinances or bylaws governing any municipal activity to the extent such municipal authority is not expressly preempted by state or federal law or regulation.

Grant Of Powers; Corporate Limits

The Legislature granted broad powers to municipalities to develop and provide revenue producing public services within its *corporate limits*. Title 30-A § 5403 provides

A municipality may:

1. Revenue-producing municipal facilities. Acquire, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any revenue-producing municipal facility;

And,

6. Acquisition of land or personalty. Acquire in the municipality's name either by gift, purchase, lease, or the exercise of the right of eminent domain land, rights in land or water or air rights in connection with the construction, reconstruction, improvement, extension, enlargement or operation of revenue-producing municipal facilities; acquire any personal property, that it considers necessary in connection with those activities; and hold and dispose of all real and personal property under its control...;

The enabling act Title 30-A § 5401- 5415 defines improvements for public service, including the provision for parking facilities:

4. Improvements. "Improvements" means those repairs, replacements, additions, extensions and betterments of and to a revenue-producing municipal facility that the municipal officers consider necessary to place or maintain the revenue-producing municipal facility in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the municipality and for which no existing service is being provided.

5. Parking facility. "Parking facility" means any land or any interest in land, structure or portions of structures, and improvements on land or structures intended for the off-street parking of motor vehicles by the public for a fee. Any such structure may be either single or multi-level and either at, above or below the surface.

However, these powers, for the purposes of the Frye Island Municipal Park & Ride development, are prescribed to the *corporate limits* as delineated under the Charter. Title 30-A § 5401

(7). Revenue-producing municipal facility. "Revenue-producing municipal facility" means:

A. A parking facility ***within the corporate limits of the municipality.***

(Emphasis added).

Accordingly, the Town of Frye Island is without authority to appropriate funds, nor is the Town of Frye Island vested with the authority for acquisition of real property for the development of a Park and Ride facility beyond the corporate limits of Frye Island. Without this authority,

the Town of Frye Island fails to produce evidence of *all good, right, title and interest* and therefore the Application for Storm Water Permit is not complete and may not be reviewed.

VII Permit Required:

Site Location of Development Law (38 M.R.S.A. Sections 481 et. Sec).

The Town of Frye Island has failed to make application and be awarded a permit as required under Site Location of Development Law (38 M.R.S.A. Sections 481 et. Sec) for the development of a Municipal Park & Ride Facility carved into the shore of a *Lake Most At Risk*, pursuant to Rule 502. (38 M.R.S.A. Sections 481 et. Sec).

Site Location of Development Law requires, pursuant to Title 38 M.R.S.A. §481, that developments, because of their size and nature which are capable of causing irreparable damage to the environment, and which may substantially affect the environment and quality of life in Maine, discretion must be vested in Maine Department of Environmental Protection to regulate the location. The Site Location of Development Law further provides at §483-A. that no construction of a development as described under the Site Location of Development Law may be undertaken without a permit issued by the Maine Department of Environmental Protection.

Municipal Park & Ride Facility; Development Plan Exceeds Twenty Acres

The Town of Frye Island within its Application before the Planning Board for the Town of Raymond dated June 14, 2012 for Site Plan Approval disclosed that Frye Island was developing a twenty six acre parcel located at Cape Road and Quarry Road on Raymond Cape for a Municipal Park & Ride Facility. Coupled with the Application for a Shoreland Zoning Permit, Frye Island filed a Storm Water Discharge Application dated June 16, 2012 with the Maine Department of Environmental Protection. While Frye Island's Application curiously represents that only 1.36 acres are subject to the development plan; and 0.96 acres will be developed as an impervious area, the Municipal Park & Ride Facility development plan is dependent upon the entirety of the 25.67 acres to be afforded the phosphorus budget of 1.57 pounds per year. (Exhibit 7, MDEP Storm Water Permit Application, Site Plan Sheet C06 Phosphorous).

Within its amended Application under date of December 26, 2012, the Town of Frye Island incorporated certain stormwater mitigation installations to its site plan which it claims will bring its treated phosphorous export to 1.20 pounds per year.

The Applicant claims phosphorous credits of 0.16 pounds per year for development mitigation, leaving a net phosphorous export credit of 0.53 pounds per year. Under the stormwater discharge mitigation designed by the Town of Frye Island, the entirety of the 25.67 acres are legally and perpetually encumbered by the Phase I Application.

The development of a twenty six acre parcel on the shore of Sebago Lake brings the Frye Island Municipal Park & Ride Facility within the jurisdiction of Site Location of Development Law (38 M.R.S.A. Sections 481 et. Sec).

Municipal Park & Ride Facility; Multiple Phase Development

Within the Project Narrative of the Application For Site Plan Review And Shoreland Zoning Permit under date of June 16, 2012, the Town of Frye Island disclosed the Transportation Plan to provide *short and long term parking* on Raymond Cape in order alleviate the traffic and parking problems on the Island. The Application further discloses the Transportation Plan to develop the Municipal Park & Ride Facility in order to enable residents, guests and contractors of the Island to leave their automobiles on Raymond Cape while traveling to the Island as a pedestrian passenger or by golf carts kept at the Municipal Park & Ride Facility.

While the initial Application sought Planning Board approval of the Island's *Phase I Site Plan* for fifty parking spaces, the Project Narrative reveals that

[s]hould the demand for parking increase in the future, then the preliminary designs to expand the site to handle many more parking spaces, a dedicated area for golf carts and a small administration building have been prepared.

Page 3, Project Narrative, June 14, 2012 Site Plan Approval Application.

Pursuant to Chapter 372 under the Act for *Policies And Procedures*, the promulgated Rules at 1 *Scope Of Review* provides:

In reviewing applications for approval of proposed developments under the Site Location Law, the Board shall consider the size, location, and nature of the proposed development in relation to:

- A. The potential primary, secondary, and cumulative impacts of the development on the character, quality, and uses of the land,

air, and water on the development site and on the area likely to be affected by the proposed development; and

B. The potential effects on the protection and preservation of the public's health, safety, and general welfare.

Rule 10 under Chapter 372 further provides with respect to phased development:

10. Phased Development. The Board requires that an application for approval include present plans for all phases of a development to be undertaken on a parcel. In the absence of evidence sufficient to approve all phases of the proposed development, the Board may approve one or more phases of the development based on the evidence then available. Approval of phases, however, shall be based on compliance of the entire proposed development with the standards of the Site Location Law.

The Commissioner's note to Rule 10 clarifies the requirement that all phases of the project be submitted in order for the application to be considered.

NOTE: A proper analysis of the potential primary, secondary and cumulative impacts of a proposed development can be made only when all phases of a proposed development are considered. Also, the plans for site modification and pollution mitigation need to be based on the entire extent of a proposed development in order to insure their effectiveness in accomplishing the desired objectives.

In a Memorandum of the Town Manager, Town of Frye Island filed with the Town of Raymond, Planning Board, the Town Manager argued that the Municipal Park & Ride Facility on Raymond Cape was needed to relieve the traffic and parking congestion on the Island. The Town Manager confessed that

[I]f you travel around the Island on any weekend, you are more likely than not to see two or more vehicles in many driveways. This is especially true on holiday weekends.

Town Manager Memorandum attached.

There are presently five hundred residential properties occupied on Frye Island with approval for up to seven hundred fifty total residences. If the Town Manager's assessment is correct, within the next several years, the Ferry Landing and the Municipal Park & Ride Facility would be burdened by over fifteen hundred automobiles transiting and parking on any given day.

This extent of automobile burden on the Raymond Cape parcels was confirmed by Mark Gray, P.E. and Agent for the Town of Frye Island. In a colloquy between the Town of Raymond Planner and Mark Gray within the February 13th 2013 hearing of the Planning Board for the Town of Raymond, it was conceded that the level of automobile burden on the Island was at least one thousand automobiles, but that with the full development within several years, the automobile burden would approach two thousand automobiles which would traverse the Ferry Landing and in great part be diverted to the Municipal Park & Ride Facility on any given day, a burden that Raymond Cape can not sustain. (Copy of the hearing audio and video attached).

In order to relieve the burden on the Island the Transportation Committee of the Town of Frye Island developed a Mainland Parking Plan to provide parking for up to two hundred fifty automobiles within the proposed Municipal Park & Ride Facility as is revealed within the Parking Plan proposed by the Selectmen of the Frye Island.

Mainland Parking Plan

2009 Draft

PARKING PLAN — The Transportation Committee under the auspices of the Board of Selectmen/ Executive Committee have been working on how to best develop the property on Raymond Cape that is owned by the Town of Frye Island. The sketch shown below is the current concept. The concept only indicates how the property could be used to meet the long-term needs to improve for ferry operational capacity. The timing of any development has not been determined at this point in time.

and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

Title 38 M.R.S.A. § 484 (3).

Frye Island's Mainland Parking Plan, as revealed above, to be sited upon the shore of Sebago Lake is so grossly inharmonious with the Shoreland Zoning Ordinances of the Town of Raymond and the Limited Residential and Recreational Zone as codified within the Land Use Ordinances that the Maine Department of Environmental Protection may not consider approval of any such Application for site plan development. Under the Site Location of Development Law, no development under the jurisdiction of the Maine Department of Environmental Protection (Title 38 M.R.S.A. §483 A) may proceed without such approval.

**IX Failure To Meet The Statutory And
Rule Requirements Of Application For
Storm Water Law Permit (38 M.R.S.A. § 420 D).**

The Town of Frye Island filed an Application before the Planning Board for the Town of Raymond dated June 14, 2012 for Site Plan Approval for a Municipal Park & Ride Facility situated upon a twenty six acre parcel located at Cape Road and Quarry Road on Raymond Cape within a Limited Residential And Recreation zone on the shore of Sebago Lake, a lake determined to be *Most At Risk*. Coupled with the Application for a Shoreland Zoning Permit, Frye Island filed a Storm Water Discharge Application dated June 16, 2012 with the Maine Department of Environmental Protection in conjunction with the development of a Municipal Park & Ride Facility which curiously represents that only 1.36 acres are subject to the development plan; and only 0.96 acres will be developed as an impervious area.

**Phosphorous Export Calculation In Error;
Reporting Misrepresented**

The Town of Frye Island within its Stormwater Discharge Application reveals that the Municipal Park & Ride Facility is dependent upon the entirety of the 25.67 acres to be afforded the phosphorus budget of 1.57 pounds per year. (Exhibit 7, MDEP Storm Water Permit Application, Site Plan Sheet C06 Phosphorous).

Within its amended Application to MDEP under date of December 26, 2012, the Town of Frye Island incorporated certain stormwater mitigation installations which it claimed would bring its treated phosphorous export to 1.20 pounds per year. The Applicant claims phosphorous credits of 0.16 pounds per year for development mitigation, leaving a net phosphorous export credit of 0.53 pounds per year. Under the stormwater discharge mitigation designed by the Town of Frye Island, the entirety of the 25.67 acres are encumbered by the Phase I application.

The Town of Frye Island failed to include within the Amended Stormwater Discharge Application (December 26, 2013) the changes to the impervious areas determining the greater calculus of phosphorous export.

The Site Plan Project Narrative (dated December 26, 2012) discusses changes and additions to the Site Plan Application which were not included within the Stormwater Discharge Application.

Impervious Area Increased Development:

1. Paved and painted five foot wide pedestrian walkway along Cape Road;
2. Paved vehicle turn out on the westerly side of Cape Road;
3. Paved and painted five foot wide pedestrian walkway along Ferry Landing driveway;
4. Widened Quarry Road and paved to intersection with Cape Road;
5. Impervious, armored ditches on northerly side of Quarry Road.

The Stormwater Narrative (dated December 11, 2012) discusses the redevelopment of impervious surface areas to include Impervious Area Redevelopment:

1. The intersection of the Ferry Landing driveway and Cape Road will be relocated and paved;
2. Parking along the Ferry Landing driveway will be widened to three lanes (two inbound stacking lanes and one exit lane) and will be paved;
3. Overlay of paving of existing paving on the Ferry Landing driveway.
4. Gravel parking on the Dock Office will be paved;

Site Location of Development Law Jurisdiction

Based upon the Application for Site Plan Approval filed with the Planning Board for the Town of Raymond and the Stormwater Discharge Permit filed with the Maine Department of Environmental Protection, the development by the Town of Frye Island of a Municipal Park & Ride Facility on the shore of Sebago Lake is subject to the Site Location of Development Law pursuant to Title 38 M.R.S.A. §481, due to the size and nature of the development. Whereas MDEP takes jurisdiction pursuant to the Site Location of Development Act, a separate calculus applies to the determination pursuant to Chapter 500 General Standards 4B (3)(f) (38 M.R.S.A. §420-D) of the allowable phosphorous export and the stormwater discharge mitigation standards.

Chapter 500 General Standards 4B(3)(f) provides:

Site Location of Development Law project including redevelopment.
For a project requiring a Site Location of Development Law permit that includes redevelopment of existing impervious area that was in existence as of November 16, 2005 (the effective date of Chapter 500 revisions), redevelopment of that impervious area is required to meet the general standards to the extent practicable as determined by the department.

(38 M.R.S.A. §420-D).

Accordingly, all of the impervious areas planned for redevelopment within the Site Plan of the Municipal Park & Ride Facility must be included within the calculus of phosphorous export; and brought to the Chapter 500 General Standards of mitigation of stormwater discharge. The Town of Frye Island has failed to report the entirety of the disturbed area of the development and failed to include the redeveloped impervious areas within the calculus of the allowable phosphorous export.

X Conclusion

The Town of Frye Island whereby its disability of constitutional and statutory authority has failed to prove that it has *all good, right, title, and interest* within the parcels affected by its application; and has been disingenuous and made misrepresentations in its dealings with the Planning Board for the Town of Raymond; and has now practiced the same upon the Maine Department of Environmental Protection.

No permit to develop such a destructive development upon the shore of Sebago Lake should be allowed without a full site plan evaluation by the Department of Environmental Protection and public hearings for all those affected.

Dated this 19th day of February,



Stephen C. Chute, Esq.

Maine Bar No. 6828

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Copies:

Code Enforcement Officer, Town of Raymond

Chairman, Planning Board, Town of Raymond

Planner, Town of Raymond.

